

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**Patent Application**

5 Applicant(s): LaJoie et al.  
Docket No.: TWC 03-12/1033-17  
Serial No.: 10/755,810  
Filing Date: January 12, 2004  
Group: 2426  
10 Examiner: Jun Fei Zhong  
  
Title: Technique for Providing Security Measures for Communications Device  
Connectable to a Communications Network

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**APPEAL BRIEF**

20 Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

25 Sir:

Applicants hereby appeal the rejection dated January 8, 2009, of Claims 1-9, 29-37, 58, 59, 61 and 62 of the above-identified patent application.

REAL PARTY IN INTEREST

The present application is assigned to Time Warner Cable, Inc., as evidenced by an assignment recorded on July 19, 2004 in the United States Patent and Trademark Office at Reel 015576, Frame 0154. The assignee, Time Warner Cable,  
5 Inc., is the real party in interest.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

STATUS OF CLAIMS

Claims 1-9, 29-37, 58, 59, 61 and 62 are presently pending in the above-identified patent application. Claims 1-9, 29-37, 58, 59, 61 and 62 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over McElhatten et al. (US Patent No. 7,073,189)(hereinafter, “McElhatten”) in view of Gammie (US Patent No. 5,237,610)(hereinafter “Gammie”), further in view of Donlan et al. (US Patent Publication No. 2004/0088734)(hereinafter, “Donlan”), further in view of Hrastar et al. (US Patent No. 6,272,150)(hereinafter, “Hrastar”), and further in view of Menard et al. (US Patent Publication No. 2002/0177428)(hereinafter, “Menard”). Claims 1-9, 29-37, 58, 59, 61 and 62 are being appealed.

STATUS OF AMENDMENTS

There have been no amendments filed subsequent to the January 8, 2009 rejection.

SUMMARY OF CLAIMED SUBJECT MATTER

Independent Claim 1 is directed to a system (FIG. 1, with detail of host set top terminal 158-1 in FIG. 6; page 7, line 11 – page 12, line 11; page 16, line 28 – page 17, line 27) including a digital cable host device (FIGS. 1 & 6: 158-1; page 9, lines 21-23; page 16, line 28 – page 17, line 27) and a point-of-deployment module (FIG. 6:165; page 1, line 13 – page 3, line 11; page 9, lines 21-23; page 10, line 25 – page 12, line 18) coupled to the digital cable host device. The system also includes a communications network (FIG. 1:140; page 7, lines 15-19) that at least initially has a connection to the digital cable host device, as well as a server (FIG. 1: 126; page 12, line 21 - page 14, line 15; page 15, line 20 – page 16, line 23; page 17, line 11 – page 18, line 8). The server has an interface (FIG. 1: 119; page 11, line 29 – page 12, line 9) for receiving, from the digital cable host device, signals through the communications network. The signals indicate continuity of the connection (FIG. 4: 403, 406; page 12, line 21 – page 13, line 23). Each of the signals contains information identifying the device (not separately illustrated; page 12, line 27 – page 13, line 2). The system further includes a database (FIG. 3: 300 (exemplary record thereof); page 7, lines 2 – 10; page 11, line 3 – page 12, line 18) associated with the server. The database includes a record (FIG. 3: 300; page 12, lines 9-18) with contact information (FIG. 3: 330; page 12, lines 16-18) for a user of the digital cable host device together with the information (FIG. 3: 315; page 12, lines 13-16) identifying the device. The database is populated based on an authorization process (not separately illustrated; page 10, line 25 – page 11, line 24) for the digital cable host device and the point-of-deployment module. The digital cable host device is configured to generate the signals with the information identifying the device (not separately illustrated; page 12, line 24 – page 13, line 2). The server is configured such that, responsive to receipt of a first one of the signals, the server determines whether a second one of the signals is received within a period from the receipt of the first signal (FIG. 4: 403, 406; page 13, lines 3 – 17). The server is further configured such that the server generates an alert to prompt an operator of the communications network to contact the user of the device if it is determined that the second signal is not received within the period (FIG. 4 “NO” branch of decision block 406, and step 409; page 13, lines 17 – 18).

The alert includes the contact information for the user from the database (FIG. 4: 412; page 13, lines 18 – 23). The contact information is identified based on the information identifying the device (FIG. 3: 315; page 13, lines 6 – 13 and 15-20).

Independent Claim 29 is directed to a method (FIG. 4; page 12, line 20 –  
5 page 14, line 15)) including the step of receiving, from a digital cable host device having  
a point-of-deployment module coupled thereto, signals through a communications  
network (FIG. 4: 403; page 12, line 20 – page 13, line 15). The signals indicate  
continuity of a connection between the digital cable host device and the network (FIG. 4:  
403, 406; page 12, line 21 – page 13, line 23). Each of the signals contains information  
10 identifying the device (not separately illustrated; page 12, line 27 – page 13, line 2). The  
method also includes the step of, in response to receipt of a first one of the signals,  
determining whether a second one of the signals is received within a period from the  
receipt of the first signal (FIG. 4: 406; page 13, lines 15-17). The method further  
includes the step of, if it is determined that the second signal is not received within the  
15 period, accessing a database including a record with contact information for a user of the  
digital cable host device together with the information identifying the device (FIG. 4  
“NO” branch of decision block 406, and steps 409 and 412; page 13, lines 17 – 23). The  
database is populated based on an authorization process (not separately illustrated; page  
10, line 25 – page 11, line 24) for the digital cable host device and the point-of-  
20 deployment module. The database is accessed to obtain the contact information based on  
the information identifying the device contained in the first one of the signals (FIG. 3:  
315; page 13, lines 6 – 13 and 15-20). The method still further includes generating an  
alert to prompt an operator of the communications network to contact the user of the  
device (FIG. 4: 409; page 13, lines 17-18). The alert includes the contact information for  
25 the user from the database(FIG. 4: 412; page 13, lines 18 – 23).

STATEMENT OF GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether Claims 1-9, 29-37, 58, 59, 61 and 62 are unpatentable under 35 U.S.C. § 103(a) over McElhatten in view of Gammie, further in view of Donlan, further in view of Hrastar, and further in view of Menard.



ARGUMENT

Rejection under 35 U.S.C. 103(a) as allegedly unpatentable over  
McElhatten, Gammie, Donlan, Hrastar, and Menard

Claim 1

5           Claim 1 was rejected under 35 U.S.C. § 103(a) as allegedly obvious in  
view of a proposed combination of McElhatten, Gammie, Donlan, Hrastar, and Menard.  
Claim 1 is directed to a system (FIG. 1, with detail of host set top terminal 158-1 in FIG.  
6; page 7, line 11 – page 12, line 11; page 16, line 28 – page 17, line 27) including a  
digital cable host device (FIGS. 1 & 6: 158-1; page 9, lines 21-23; page 16, line 28 –  
10   page 17, line 27) and a point-of-deployment module (FIG. 6:165; page 1, line 13 – page  
3, line 11; page 9, lines 21-23; page 10, line 25 – page 12, line 18) coupled to the digital  
cable host device. The system also includes a communications network (FIG. 1:140;  
page 7, lines 15-19) that at least initially has a connection to the digital cable host device,  
as well as a server (FIG. 1: 126; page 12, line 21 - page 14, line 15; page 15, line 20 –  
15   page 16, line 23; page 17, line 11 – page 18, line 8). The server has an interface (FIG. 1:  
119; page 11, line 29 – page 12, line 9) for receiving, from the digital cable host device,  
signals through the communications network. The signals indicate continuity of the  
connection (FIG. 4: 403, 406; page 12, line 21 – page 13, line 23). Each of the signals  
contains information identifying the device (not separately illustrated; page 12, line 27 –  
20   page 13, line 2).

The system further includes a database (FIG. 3: 300 (exemplary record  
thereof); page 7, lines 2 – 10; page 11, line 3 – page 12, line 18) associated with the  
server. ***The database includes a record*** (FIG. 3: 300; page 12, lines 9-18) ***with contact***  
***information*** (FIG. 3: 330; page 12, lines 16-18) ***for a user of the digital cable host***  
25 ***device together with the information*** (FIG. 3: 315; page 12, lines 13-16) ***identifying the***  
***device. The database is populated based on an authorization process*** (not separately  
illustrated; page 10, line 25 – page 11, line 24) ***for the digital cable host device and the***  
***point-of-deployment module.*** The digital cable host device is configured to generate the  
signals with the information identifying the device (not separately illustrated; page 12,  
30   line 24 – page 13, line 2). The server is configured such that, responsive to receipt of a

first one of the signals, the server determines whether a second one of the signals is received within a period from the receipt of the first signal (FIG. 4: 403, 406; page 13, lines 3 – 17). ***The server is further configured such that the server generates an alert to prompt an operator of the communications network to contact the user of the device if it is determined that the second signal is not received within the period*** (FIG. 4 “NO” branch of decision block 406, and step 409; page 13, lines 17 – 18). ***The alert includes the contact information for the user from the database*** (FIG. 4: 412; page 13, lines 18 – 23). ***The contact information is identified based on the information identifying the device*** (FIG. 3: 315; page 13, lines 6 – 13 and 15-20).

As noted, Claim 1 was rejected under 35 U.S.C. § 103(a) as allegedly obvious in view of a proposed combination of McElhatten, Gammie, Donlan, Hrastar, and Menard. McElhatten is directed to a program guide and reservation system for a network based digital information and entertainment storage and delivery system. The Examiner cited column 10, lines 30-42 of McElhatten, which mention that a terminal can send a heartbeat to a media processor and that the media processor can ***cease transmitting a transport stream*** when the heartbeat is no longer received. Halting a transmission in McElhatten has ***no connection whatsoever with any kind of security function***; it simply reflects that the terminal has been turned off and transmission should cease. Gammie is directed to an external security module designed to ***protect the operator of the satellite television network from theft of services***. Gammie 1:40-42. Donlan is directed to provisioning client devices connected to an interactive TV network. Donlan abstract. Hrastar is directed to a cable modem map display wherein devices with different statuses are displayed in different colors. Hrastar 21:1-67. Menard, from a non-analogous art, is directed to ***preventing false alarms in a burglar and fire alarm system***. Menard 0075.

The cited prior art thus describes conventional systems with security measures designed to protect the television operator from theft of services, and a non-analogous reference wherein a user of a burglar or fire alarm is contacted to verify the validity of an alarm. However, as noted at page 3, lines 14-19, and page 6, line 23 to page 7, line 1 of the present specification, while in the prior art a POD module is

designed to provide security measures for a cable operator, e.g., securing premium cable services provided by a cable operator, the *claimed invention* focuses on *providing security measures with the POD module for a cable user and, in particular, a host device consumer*.

5                   The rejection of Claim 1 is improper because:

(i) the proposed combination of McElhatten, Gammie, Donlan, Hrastar, and Menard is improper; and

(ii) even if combined, the combination fails to teach or suggest all the claimed limitations.

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*The Proposed Combination is Improper*

With regard to point (i), in the wake of *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1395-97 (2007), MPEP 2143 provides that exemplary rationales that may support a conclusion of obviousness include, *inter alia*, some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention. MPEP 2143 at 2100-128. It is applicants' understanding that the Examiner is relying on this rationale for the proposed combination. MPEP 2143(G) further provides that, to reject a claim based on this rationale, office personnel must . . .  
15                   articulate the following: (1) a finding that there was some teaching, suggestion, or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; (2) a finding that there was reasonable expectation of success; and (3) whatever additional findings based on the *Graham* factual inquiries may be necessary, in view of  
20                   the facts of the case under consideration, to explain a conclusion of obviousness. MPEP 2143(G) at 2100-138. As noted, MPEP 2143(G) addresses a rationale based on teaching, suggestion, or motivation to combine. However, combination is *improper* where, as here:  
25

1. There is *no such teaching, suggestion, or motivation*;

2. The Examiner's rationale does not state a motivation to *arrive at the claimed invention*;

3. There is no reasonable expectation of success;

4. At least one of the references is non-analogous art; and

5. *Improper* hindsight is being applied to piece together disparate references using knowledge gleaned only from applicants' disclosure.

As noted, prior to applicants' invention, the POD module has been focused on providing security measures for a cable operator; there has simply not been any concern with security for the end-user's equipment in a cable network. While it is true that "[a]ny judgment on obviousness is in a sense necessarily a reconstruction based on *hindsight* reasoning, . . . so long as it takes into account *only knowledge which was within the level of ordinary skill in the art at the time the claimed invention was made and does not include knowledge gleaned only from applicant's disclosure, such a reconstruction is proper.*" *In re McLaughlin* 443 F.2d 1392, 1395, 170 USPQ 209, 212 (CCPA 1971), *cited in* MPEP 2145 at 2100-167. However, applicants respectfully assert that the proposed combination of McElhatten, Gammie, Donlan, Hrastar, and Menard is a case of *improper hindsight*, wherein the burglar and fire alarm aspects of Menard are included by the Examiner only because of the knowledge, gleaned solely from applicants' specification, of use of the POD module for end-user oriented security in a cable network, *as first disclosed in the instant specification, and not taught or suggested in the prior art.*

On page 6 of the Office Action, the Examiner alleges that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to have verified alarm signal as taught by Menard to the set top terminal of McElhatten as modified by Hrastar in order to verify the authentication of the devices when an alarm signal is received for the benefits of protecting service provider." It is respectfully asserted that his proposed rationale is deficient on multiple grounds:

1. There is simply no such motivation. The contact initiated in the burglar and fire

alarm system of Menard is to prevent false alarms. The Examiner has pointed to nothing suggesting that false alarms of any type are a problem to a cable television operator. The Examiner has alleged a benefit of protecting a service provider, without explaining how such a benefit to the service provider would be achieved by notifying the user of the end of the heartbeat. In the passage “to verify the authentication of the devices when an alarm signal is received” the Examiner does not appear to have identified the devices, the authentication, or the alarm signal.

2. The Examiner’s rationale does not state a motivation to arrive at the claimed invention.

While the KSR court held that Examiners may look beyond the problem sought to be solved, KSR, 82 USPQ2d at 1389-1390, there must still be a motivation *to achieve the claimed invention*, MPEP 2143G at 2100-138. It is respectfully noted that the purported motivation of protecting the service provider provides at most a motivation to add *some kind* of security module to McElhatten to *protect the operator and prevent theft of services*; it provides *no motivation to contact the user*.

3. Applicants respectfully note that the Examiner has not identified how the person having ordinary skill in the art would have a *reasonable expectation of success* in adapting *burglar and fire alarm techniques* to a *network interacting with a digital cable device*. MPEP 2143G at 2100-138.

4. Menard is non-analogous art. To rely on a reference under 35 U.S.C. 103, it must be analogous prior art. MPEP 2141.01(a). For art to be analogous, it must be in the field of the applicant’s endeavor or reasonably pertinent to the problem to be solved. Stephen G. Kunin & Andrew K. Beverina, Commentary, KSR’s *Effect on Patent Law*, 106 Mich. L. Rev. First Impressions 50, 54 (2007), <http://www.michiganlawreview.org/firstimpressions/vol106/kuninbeverina.pdf>.

Menard is directed to burglar and fire alarms. The present application is directed to securing communications equipment removable from its connection to a cable television network. Thus, Menard is not in the field of applicant’s endeavor. Furthermore, Menard is directed to preventing false burglar and fire alarms. The

presently claimed invention is directed to *providing security measures with the POD module for a cable user and, in particular, a host device consumer*. Thus, Menard relates to solving a different problem, and fails both prongs of the test for analogous art.

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Furthermore, the Examiner alleges, on page 5 of the instant Office Action, that it “would have been obvious to one having ordinary skill in the art at the time the invention was made to provide alerting operator as taught by Hrastar to the set top terminal of McElhatten in order to provide the user of the network management station is  
10 empowered to make better decisions regarding causes and effect of anomalies in the network, as well as improving the understanding of the network for growth planning, potential failure scenarios, routing diagnostic tests, maintenance and the like,” citing 3:30-40 of Hrastar. However, the heartbeat aspect in McElhatten 10:30-42 relates to *ceasing transmission of a television program* when a terminal stops sending heartbeats,  
15 because the terminal has simply been turned off in *normal operation*. There is nothing in McElhatten which indicates any kind of need for the cable modem map of Hrastar. There is no motivation to combine the heartbeat function of McElhatten, simply stopping transmission of a program when the receiving terminal is turned off, with the complex *cable modem map* of Hrastar. It is respectfully submitted that the Examiner is again  
20 applying *improper hindsight*, wherein the cable modem monitoring aspects of Hrastar are included by the Examiner only because of the knowledge, gleaned only from applicants’ specification, of use of generating an alarm to contact the user in response to ceasing of the heartbeat, *as first disclosed in the instant specification, and not taught or suggested in the prior art*.

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*Even if Combined, the References Do Not Render Every Claim Limitation Obvious*

“All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 165 USPQ 494, 496 (CCPA 1970); MPEP  
30 2143.03. Here, even if combined, the five references fail to teach or suggest “a database

associated with the server, the database comprising a record with contact information for a user of the digital cable host device together with the information identifying the device, *the database being populated based on an authorization process for the digital cable host device and the point-of-deployment module.*” McElhatten 5:35-58 and 7:14-20  
5 make no mention of a database satisfying the indicated limitations. This deficiency is not cured by Gammie abstract, 4:1-7, 6:19-34, 7:5-27, 14:4-29, and FIGS. 5-7 as cited on page 4 of the Office Action. Note that “e.g., check if the first and second secret serial number match or not” as mentioned by the Examiner on page 4 appears to constitute an authorization process itself, and not the claimed *population of a database during such a*  
10 *process.*

Gammie’s abstract makes no mention of the claimed database. Gammie 4:1-7 describes removing a secret serial number for a decoder from a database when service to that decoder is to be terminated. There is no mention of the database being populated as set forth in the claim. Gammie 6:19-34 refers to writing secret serial numbers *into a*  
15 *replaceable security module.* There is no mention of the claimed database and it can be stated *a fortiori* that there is no mention of population of a database or of a database associated with a server that can receive heartbeat signals. Gammie 7:5-27 describes a database with a list of secret serial numbers for all authorized subscribers. There is nothing to suggest that such database is populated based on an authorization process for a  
20 digital cable host device and a point-of-deployment module. Gammie 14:4-29 discuss assigning each decoder an address and serial number. Again, there is no mention of a database populated based on an authorization process for a digital cable host device and a point-of-deployment module; on the contrary, *these passages imply that in the system of Gammie, any database must be pre-populated.* FIGS. 5-7 simply show element 511  
25 “SSN Database,” element 611 “Database,” and elements 711, 716 “SSN<sub>0</sub> Database,” and “SSN<sub>1</sub> Database.” There is no indication of how these elements are populated. Furthermore, these databases are all in encoders of a satellite system so they would also not meet the limitation that they are associated with a server that can receive heartbeat signals from the host device, because the satellite links are of a one-way nature.  
30 Upstream communications in Gammie are limited to placing a telephone call. Gammie

8:56-59; FIG. 11: 1188; FIG. 12: 1288.

Furthermore, even if combined, the five references fail to teach or suggest that “the server *generates an alert to prompt an operator of the communications network to contact the user of the device if it is determined that the second signal is not received*  
5 *within the period, the alert including the contact information for the user from the database, the contact information being identified based on the information identifying the device.*” Hrastar 21: 1-67 teaches assigning colors to symbols representing current status of system devices within a network. The statuses include unknown, normal/up, warning, minor/marginal, major, and critical. There is mention that device colors can be  
10 changed by the user. Hrastar 21: 43-45. There is no indication in Hrastar 21: 1-67 of how the statuses of the devices are obtained, and it can be stated *a fortiori* that there is no teaching or suggestion of *generating an alert if it is determined that a second signal is not received within the period*. Furthermore, the “alert” of Hrastar is a mere change of color on a computer display. There is no possibility of a change of color including *the*  
15 *contact information for the user from the database, the contact information being identified based on the information identifying the device* (i.e., from the heartbeat signals). Donlan 0048 simply mentions a database containing a variety of information. There is no teaching or suggestion in Donlan or anywhere in the art of record, even if combined, of *generating an alert based on failure to receive the heartbeat in a*  
20 *predetermined time wherein the alert includes the contact information for the user from the database (which was populated based on an authorization process for the digital cable host device and the point-of-deployment module) and wherein the contact information is identified based upon the information (from the heartbeat signal) identifying the device.*

25 Accordingly, the Examiner’s rejection of Claim 1 as unpatentable over the combination of McElhatten, Gammie, Donlan, Hrastar, and Menard is improper and should be reversed by the board.

#### Claim 2

30 Claim 2 is patentable for at least the reasons set forth with respect to



Claim 1, and furthermore, the arguments with regard to the non-analogous nature of Menard apply *a fortiori* to the claimed two-way multichannel delivery network.

Accordingly, the Examiner's rejection of Claim 2 as unpatentable over the combination of McElhatten, Gammie, Donlan, Hrastar, and Menard is improper and  
5 should be reversed by the board.

Claim 3-9

Claim 3 is patentable for at least the reasons set forth with respect to Claims 1 and 2, and furthermore, the arguments with regard to the non-analogous nature  
10 of Menard apply with still greater force to the claimed cable TV network. Claims 4-9 are patentable for at least the reasons set forth with respect to Claim 3.

Accordingly, the Examiner's rejection of Claims 3-9 as unpatentable over the combination of McElhatten, Gammie, Donlan, Hrastar, and Menard is improper and  
15 should be reversed by the board.

Claim 58

Claim 58 further limits Claim 1 and is directed to an aspect of the invention illustrated in blocks 415, 418, 422, and 409 and described at page 13, line 24, through page 14, line 15. The record in the database includes a host device identifier.  
20 The server is further configured such that if it is determined that the second signal is received within the period (i.e., no loss of heartbeat), the server determines (decision block 422) whether the information identifying the device, contained in the second signal, matches the host device identifier from the record. Responsive to determining that the information identifying the device, contained in the second signal, does not match the  
25 host device identifier from the record ("NO" branch of decision block 422), the server prompts the operator to investigate a potential unauthorized host replacement.

It is respectfully submitted that the Examiner has again pieced together unrelated passages in the art of record using improper hindsight gleaned solely from applicants' specification. McElhatten 10:30-42 simply mentions continuing to check for  
30 heartbeats and ceasing transmission when they stop in the normal course of operation due

to turning off the set top terminal. Gammie 14:1-29 make no mention of the claimed database record with a host identifier. The passage on page 8 of the Office Action mentions “Gammie disclose the record comprises a host device identifier (see col. 14, lines 1-29), responsive to determining that the information identifying the device, contained in the second signal, does not match the host identifier from the record” and then cites Gammie 2:42-65; 3:6-23; 9:42-46; 14:4-29; 16:3-25; and 18:36-67 as well as FIGS. 1, 4, 6, and 7. Gammie 2:42-65 and 3:6-23 refer to transmission of descrambling keys in a satellite system, which is unrelated to comparing information in a heartbeat signal with that in a record of a database associated with a server; furthermore, Gammie could not possibly involve a heartbeat signal because as noted above, upstream communication in the satellite system of Gammie is limited to placing a phone call. Gammie 9:42-46 merely mentions that it is an object of the Gammie reference to have a replaceable security module which will work with only one decoder and cannot be used with another decoder. No information is provided in such passage as to how such a goal could be achieved. Gammie 14:4-29 discuss assigning each decoder an address and serial number; Gammie 16:3-25 describes transferring security functions from an internal to an external module in the case of a security breach; and Gammie 18:36-67 describes technical features of a so-called “smart card” replaceable security module; none of these passages has any connection with comparing information in a heartbeat signal with that in a record of a database associated with a server. FIGS. 1, 4, 6, and 7 of Gammie illustrate, respectively, a prior art satellite system, a secure microprocessor, another prior art satellite system, and a satellite system of Gammie’s patent. These figures have no connection with comparing information in a heartbeat signal with that in a record of a database associated with a server. Menard 0075 and FIG. 6, as noted, describe calling a person up to check for a false fire or burglar alarm. It is note with respect that there is no teaching or suggestion of prompting an operator to investigate a potential unauthorized host replacement in response to determining that the information identifying the device, contained in the second signal, does not match the host device identifier from the record.

Accordingly, the Examiner’s rejection of Claim 58 as unpatentable over the combination of McElhatten, Gammie, Donlan, Hrastar, and Menard is improper and

should be reversed by the board.

Claim 59

Claim 59 further limits Claim 58 and is directed to an aspect of the invention described at page 14, lines 12-15. The server is further configured such that, responsive to determining that the information identifying the device, contained in the second signal, does not match the host device identifier from the record, the server communicates with the point-of-deployment module to limit access to the network. It is respectfully asserted that the Examiner again pieces together unrelated passages in the art of record using *improper* hindsight gleaned solely from applicants' specification. McElhatten 10:30-42 simply mentions continuing to check for heartbeat and ceasing transmission when the heartbeats stop. As noted elsewhere, Gammie is inapplicable to information in a second heartbeat signal not matching a host identifier from a record, because as noted above, upstream communications in Gammie are limited to placing a telephone call. Gammie 2:42-65; 3:6-23; 9:42-46; 14:4-29; 16:3-25; and 18:36-67 as well as FIGS. 1, 4, 6, and 7 have been reviewed above in the discussion of Claim 58 and such comments are respectfully reiterated.

Accordingly, the Examiner's rejection of Claim 58 as unpatentable over the combination of McElhatten, Gammie, Donlan, Hrastar, and Menard is improper and should be reversed by the board.

Claim 29

Claim 29 is directed to a method tied to another statutory category (digital cable host device, communications network) having limitations similar to Claim 1. The Examiner based the rejection of Claim 29 on the rejection of Claim 1, and it is respectfully submitted that such rejection is deficient for the reasons set forth above with respect to Claim 1.

Accordingly, the Examiner's rejection of Claim 29 as unpatentable over the combination of McElhatten, Gammie, Donlan, Hrastar, and Menard is improper and should be reversed by the board.

Claim 30

Claim 30 is patentable for at least the reasons set forth with respect to Claim 2.

5 Accordingly, the Examiner's rejection of Claim 30 as unpatentable over the combination of McElhatten, Gammie, Donlan, Hrastar, and Menard is improper and should be reversed by the board.

Claim 31-37

10 Claims 31-37 are patentable for at least the reasons set forth with respect to Claims 3-9.

Accordingly, the Examiner's rejection of Claims 31-37 as unpatentable over the combination of McElhatten, Gammie, Donlan, Hrastar, and Menard is improper and should be reversed by the board.

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Claim 61

Claim 61 is patentable for at least the reasons set forth with respect to Claim 58.

20 Accordingly, the Examiner's rejection of Claim 61 as unpatentable over the combination of McElhatten, Gammie, Donlan, Hrastar, and Menard is improper and should be reversed by the board.

Claim 62

25 Claim 62 is patentable for at least the reasons set forth with respect to Claim 59.

Accordingly, the Examiner's rejection of Claim 62 as unpatentable over the combination of McElhatten, Gammie, Donlan, Hrastar, and Menard is improper and should be reversed by the board.

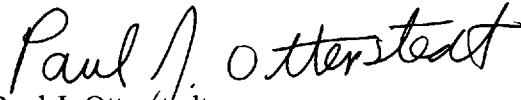
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Conclusion

The rejections of the cited claims under section 103 in view of McElhatten, Gammie, Donlan, Hrastar, and Menard, alone or in any combination, are therefore believed to be improper and should be withdrawn.

5                   The attention of the Examiner and the Appeal Board to this matter is appreciated.

Respectfully,



10           Date: June 1, 2009

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APPENDIX

1. A system comprising:

a digital cable host device;

5 a point-of-deployment module coupled to the digital cable host device;

a communications network at least initially having a connection to the digital cable host device;

a server comprising an interface for receiving, from the digital cable host device, signals through the communications network, the signals indicating continuity of the connection, each of the signals containing information identifying the device; and

a database associated with the server, the database comprising a record with contact information for a user of the digital cable host device together with the information identifying the device, the database being populated based on an authorization process for the digital cable host device and the point-of-deployment module;

wherein:

the digital cable host device is configured to generate the signals with the information identifying the device; and

the server is configured such that:

20 responsive to receipt of a first one of the signals, the server determines whether a second one of the signals is received within a period from the receipt of the first signal; and

the server generates an alert to prompt an operator of the

communications network to contact the user of the device if it is determined that the second signal is not received within the period, the alert including the contact information for the user from the database, the contact information being identified based on the information identifying the device.

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2. The system according to claim 1, wherein the communications network includes a two-way multichannel delivery network.

3. The system according to claim 2, wherein the delivery network includes a cable TV  
10 network.

4. The system according to claim 3, wherein the cable TV network includes a hybrid fiber coaxial (HFC) cable network.

15 5. The system according to claim 3, wherein the device receives programming content from the communications network.

6. The system according to claim 5, wherein the point-of-deployment module provides conditional access to selected programming content.

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7. The system according to claim 6, wherein the selected programming content is selected by the system.

8. The system according to claim 6, wherein the selected programming content includes video-on-demand (VOD) content.

9. The system according to claim 1, wherein the information includes a serial number  
5 pre-assigned to the device.

29. A method comprising:

receiving, from a digital cable host device having a point-of-deployment module coupled thereto, signals through a communications network, the signals indicating  
10 continuity of a connection between the digital cable host device and the network, each of the signals containing information identifying the device;

in response to receipt of a first one of the signals, determining whether a second one of the signals is received within a period from the receipt of the first signal; and

if it is determined that the second signal is not received within the period:

15 accessing a database comprising a record with contact information for a user of the digital cable host device together with the information identifying the device, the database being populated based on an authorization process for the digital cable host device and the point-of-deployment module, the database being accessed to obtain the contact information based on the information identifying the device contained in the first  
20 one of the signals; and

generating an alert to prompt an operator of the communications network to contact the user of the device, the alert including the contact information for the user from the database.



30. The method according to claim 29, wherein the communications network includes a two-way multichannel delivery network.

5 31. The method according to claim 30, wherein the delivery network includes a cable TV network.

32. The method according to claim 31, wherein the cable TV network includes an HFC cable network.

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33. The method according to claim 31, wherein the device receives programming content from the communications network.

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34. The method according to claim 33, further comprising providing conditional access to selected programming content with the point-of-deployment module.

35. The method according to claim 34, wherein the selected programming content is selected by the system.

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36. The method according to claim 34, wherein the selected programming content includes video-on-demand (VOD) content.

37. The method according to claim 29, wherein the information includes a serial number

pre-assigned to the device.

58. The system according to Claim 1, wherein the record comprises a host device identifier and wherein the server is further configured such that:

5       if it is determined that the second signal is received within the period, the server determines whether the information identifying the device, contained in the second signal, matches the host device identifier from the record; and

          responsive to determining that the information identifying the device, contained in the second signal, does not match the host device identifier from the record, the server  
10       prompts the operator to investigate a potential unauthorized host replacement.

59. The system according to Claim 58, wherein the server is further configured such that, responsive to determining that the information identifying the device, contained in the second signal, does not match the host device identifier from the record, the server  
15       communicates with the point-of-deployment module to limit access to the network.

61. The method according to Claim 29, wherein the record comprises a host device identifier, further comprising the additional steps of:

          if it is determined that the second signal is received within the period, determining  
20       whether the information identifying the device, contained in the second signal, matches the host device identifier from the record; and

          responsive to determining that the information identifying the device, contained in the second signal, does not match the host device identifier from the record, prompting

the operator to investigate a potential unauthorized host replacement.

62. The method according to Claim 61, further comprising the additional step of,  
responsive to determining that the information identifying the device, contained in the  
5 second signal, does not match the host device identifier from the record, communicating  
with the point-of-deployment module to limit access to the network.

EVIDENCE APPENDIX

There is no evidence submitted pursuant to § 1.130, 1.131, or 1.132 or entered by the Examiner and relied upon by appellant.

RELATED PROCEEDINGS APPENDIX

There are no known decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of 37 CFR 41.37.